THE INDIAN OVERSEAS BANK LIMITED v. S. S. T. MUTHUCHELLAPPA CHETTIAR.

[Orig. Civ. Juris. (Abbott, J.) January 17, 1952]

[Malacca — Civil Suit No. 16 of 1948]

Agency — Money lent to Attorney — Termination of agency by War — Agents and Trustees (Occupation Period) Ordinance, s. 3 — Plea of novation — Scope of agency — Ratification by constituted Attorney.

The defendant, normally resident in India, carried on business in 1941 in Malacca through his attorney, K. The power of attorney was nominally for a three-year term and with the Occupation of Malaya by the Japanese ceased to be of effect. K continued to be in charge of the defendant's business throughout the Occupation. After the Occupation the defendant wrote to K that he would be coming to Malaya and till then K "should carry on as agent." In August 1946, K, purporting to act on behalf of the defendant's business and having gone into previous dealings between the defendant and the Bank arranged an overdraft with the plaintiffs, executing two promissory notes on which he signed as attorney of the defendant and in his personal capacity. In September 1946, K by letter terminated his own appointment. In September 1947, the defendant sent a new attorney, P, who paid to the plaintiffs a sum of money in reduction of the loan and promised to repay the balance.

Held, although K's power of attorney had ceased in 1946, nevertheless as he acted under the defendant's instructions to carry on, he was acting within the scope of his agency in making loans and if there was a novation it was on behalf of the principal.

Held further, that payment by P with a promise to repay constituted a ratification of K's act.

CIVIL SUIT.

W. H. Sault for the plaintiffs.

M. Edgar for the defendant.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Abbott, J. : — The plaintiffs are the Indian Overseas Bank and the defendant, who carries on a business in Malacca, is normally resident in India. The claim is for money lent.

The circumstances in which the claim arose may be set out as follows. The defendant's agent in Malacca was one Kumarappa Chettiar who, from the 30th of June 1941, functioned under a power of attorney. The power of attorney was nominally for a three-year term, but it automatically ceased to be of effect upon the Japanese occupation of Malaya; thereafter, however, Kumarappa continued to be in charge of the defendant's business throughout the occupation. Kumarappa's authority to continue to act as the defendant's agent was derived from the provisions of section 3 of the Agents and Trustees (Occupation Period) Ordinance, No. 38 of 1949 — albeit that that authority was derived from retroactive legislation. The Japanese occupation having ceased, the defendant wrote a letter (Exhibit 18) to Kumarappa saying that he (the defendant) would be coming to Malaya and "till then Kumarappa should carry on as agent." It appears, however, that the defendant did not immediately come to Malaya to take stock of his business, but he sent a certain Palaniappa Chettiar who arrived in Malacca in September 1947. Palaniappa did not meet Kumarappa because the latter had terminated his own appointment, by a letter (Exhibit 19) dated the 20th of September 1946 and had returned to India. This letter (exhibit 19) is a letter of guarantee. Shortly after taking over the business Palaniappa went into the accounts and found that Kumarappa had engaged in certain monetary transactions with the plaintiffs. It is upon those monetary transactions that the claim is based. On the 1st of August 1946 Kumarappa, purporting to act on behalf of the defendant's business, having arranged for an overdraft or loan from the plaintiff, executed two promissory notes (Exhibits 7 and 9), each in a like sum of $7,500; he signed each as attorney for the defendant and each in his personal or individual capacity. It is necessary to point out here that, although Kumarappa signed as attorney, his power of attorney had expired — but the defendant's letter (Exhibit 18), to which I have already referred, shows that the defendant had instructed Kumarappa to continue to carry on as his agent. That being so, there is a *prima facie* case that Kumarappa was acting properly within the scope of his agency. In order to unseat this *prima facie* case it would be necessary for defendant to show that Kumarappa, either with the knowledge or connivance of the bank or due to its own negligence, acted without proper authority as an agent or that he went beyond the terms of his agency. The suggestion that Kumarappa was without authority to borrow money on behalf of the defendant is quite untenable; this is made manifest by the letters (Exhibits 17 and 18) in which Kumarappa informed the defendant that the work was being carried on "by temporary loan and getting loan from the Banks" (Exhibit 17) and the defendant's reply (Exhibit 18) instructing Kumarappa to "carry on as agent". A suggestion was made on the part of the defence that Kumarappa obtained the money from the bank and converted it to his own use; there is not a vestige of evidence to support this suggestion — but even if it had been established as a proven fact it would have availed the defendant nothing unless he had further established that the bank was privy to the fraud or that it acted in a negligent way in disposing of the

money to Kumarappa. After the original Statement of Defence had been delivered the defendant, in March 1950, put in an amended Statement of Defence in which, for the first time, an issue of novation was raised. It was suggested that, because the two promissory notes took into account previous dealings between the defendant and the bank, they constituted a novation and were therefore invalid as against the defendant. I am quite unable to see any point or substance in this suggestion. If Kumarappa was, in fact, acting within the scope of his agency he had the necessary authority to enter into a novated contract on behalf of his principal. As regards the question whether Kumarappa exceeded his authority as agent or acted without authority (allegations which were not made by or on behalf of the defendant in evidence) I am of the opinion that that loan obtained by Kumarappa was ratified; it was ratified by Palanippa, after he had become the defendant's attorney. Palaniappa in fact paid $500 to the bank by way of reduction of the loan and promised to repay the balance. Having considered all the matters raised in this case, including the wealth of correspondence and documents, I am satisfied that the bank acted in good faith and that Kumarappa, in the light of Exhibits 17 and 18, acted within the scope of his agency. I therefore give judgment for the plaintiffs upon the claim, with costs, to include applications, proceedings, letters of request and motions prior to the actual hearing.

Judgment for the plaintiffs.

In re LIM PENG KOI.

[Orig. Crim. Juris. (Rogers, J.) January 19, 1952]

[Singapore — Habeas Corpus No. 1 of 1952]

Habeas Corpus — Banishment Ordinance, s. 4 — Bail.

The applicant was allowed bail by the Magistrate on a charge of gang robbery. When the bail bond was signed it was found that there was against him a Warrant of Arrest and Detention under the Banishment Ordinance; the applicant was then returned to prison. Affidavits were then sworn by responsible persons to the effect that the applicant was a natural born British subject and an Order Nisi was granted on his application for habeas corpus. Between the making of this order and the return date of hearing the warrant of arrest was cancelled. An order absolute was made and a direction given that the applicant be discharged from custody on the bail bond which had been signed.

HABEAS CORPUS.

M. B. Brash for the applicant.

E. P. Shank for the Crown.

The facts appear sufficiently from the judgment.

Cur. Adv. Vult.

Rogers, J. : — This is the return to an *Order Nisi* which issued from this Court on 11th January, 1952 that a Writ of Habeas Corpus should be addressed to the Commissioner of Prisons in charge of the Civil Prison at Outram Road calling upon him to have the body of one Lim Peng Koi brought before this Court immediately after the receipt of such Writ, unless the said Commissioner of Prisons or any other person do show cause to the contrary why such a Writ of Habeas Corpus should not issue and the said Lim Peng Koi be set at liberty.

The applicant was arrested on 25th November 1951 on a charge of gang robbery together with 7 others, and was brought before the magistrate the following day. He was then remanded in custody and sent on December 10th to the Outram Road Remand Prison. On December 31st he applied for and was granted Bail in the sum of $10,000 with 2 sureties. On January 2nd the sureties duly signed the necessary Bail Bond which in turn was signed by the magistrate, and there was, so far as the pending charge was concerned, no reason why he should not have been set at liberty.

Meanwhile, however, on December 8th a Warrant of Arrest and Detention under section 4 of the Banishment Ordinance had been issued by the Colonial Secretary against the said Lim Peng Koi but this warrant was not served on him, nor so far as I can ascertain was any information given to him as to its existence until December 31st. In the result, after the magistrate had approved the Bail Bond of 2nd January 1952 he was then told by the Superintendent of the Prison that the applicant must be returned to the Prison pursuant to the Warrant of Arrest and Detention.

Within a few days of this return to the Prison, affidavits were sworn by responsible persons to the effect that the applicant was born in Singapore in 1912 and that he is in consequence a natural born subject of His Majesty. The application for an *Order Nisi* was supported by these affidavits, and on 17th January 1952 an affidavit was sworn by one of the Assistant Secretaries of the Colonial Secretary to the effect that the Warrant of Arrest and Detention had been cancelled.

As the grounds given to the magistrate for the applicant's continued detention have accordingly ceased to exist, I am of the opinion that the applicant succeeds in this application and I now make the *Order Absolute* and direct that a Writ of Habeas Corpus be served upon the Commissioner of Prisons to produce him